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No. 266

In the Supreme Court of the United States

OCTOBER TERM, 1960

UNITED STATES OF AMERICA, APPELLANT

v.

CENTRAL VERMONT RAILWAY, INC., ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The opinion of the district court (R. 241–253) is reported at 182 F. Supp. 516.

JURISDICTION

The judgment of the district court was entered on March 7, 1960 (R. 241–253), and a timely motion for reconsideration was denied on March 26, 1960 (R. 261). The United States filed notice of appeal on May 24, 1960 (R. 267), and this Court noted probable jurisdiction of the appeal (and of the appeals in Nos. 257 and 258) on October 17, 1960 (R. 272). 364 U.S. 861. The jurisdiction of this Court is conferred by 28 U.S.C. 1253 and 2101(b).

QUESTION PRESENTED

Appellee railroads maintain joint rates for transporting asbestos from Canadian origins to points in Official Territory. These rates are lower, distance considered, than the combination rates (consisting of the Canadian carriers' proportional rates to interchange points near the international boundary plus the American carriers' local or class rates from such interchange points to the south) applicable to transportation from the same Canadian origins to points in Southern Territory. The Commission found that the foregoing rate disparity was unduly prejudicial to processors of asbestos in Southern Territory and unduly preferential of their Official Territory competitors, in violation of § 3(1) of the Interstate Commerce Act, and it entered an order requiring the appellees, "according as they participate in the transportation within the United States," to remove such undue prejudice and preference.

The question is whether the Commission had jurisdiction to enter this order.

STATUTE INVOLVED

Section 3(1) of the Interstate Commerce Act (49 U.S.C. 3(1)) provides as follows:

> It shall be unlawful for any common carrier subject to the provisions of this chapter to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular

description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

STATEMENT

The primary source of asbestos processed in the United States is in southern Quebec (R. 63), some 100 miles north of the United States-Canadian border. Asbestos is processed both in North and South Carolina (located in Southern Territory) and at various points in Official Territory (R. 62, 66).[1] The appellee carriers, including the two Canadian carriers serving the asbestos mines, maintain joint through rates for transportation from the mines to destinations in Official Territory, but have established no joint through rates to southern destinations, and Carolina plants have to pay charges based on combination rates (R. 64). These combination rates consist of the Canadian carriers' proportional rates[2] from the mines to two ports of entry in Vermont, some three to five miles inside the United States, plus the domestic carriers'

[1] Official Territory, broadly speaking, lies east of the Mississippi River and north of the Ohio and Potomac Rivers. *Class Rate Investigation, 1939*, 262 I.C.C. 447, 457.

[2] The proportional rates are restricted to traffic destined to points in the United States (R. 64, 65).

class or commodity rates from these ports of entry to Carolina destinations (*ibid.*). The combination rates to these destinations are substantially higher, distance considered, than the joint rates applicable to numerous destinations in Official Territory (R. 75–76, 79).

Thermoid Company,[2] a North Carolina processor of asbestos, filed a complaint with the Commission alleging that the rates charged it on transportation from the Canadian mines were unjust and unreasonable, in violation of § 1(4) of the Interstate Commerce Act, and were, in relation to the rates which the railroads charged the complainant's competitors in Official Territory, unduly prejudicial, in violation of § 3(1) of the Act (R. 18–24). Division 3 of the Commission ruled that, although the assailed rates had not been shown to be unreasonable, they were unduly prejudicial and unlawful under § 3(1). It held further that damages caused by this undue prejudice had not been shown with sufficient particularity to warrant an award of reparation (R. 27–32).

The Commission reopened the proceeding upon the request of both the complainant and the railroads, and consolidated it with four similar complaints filed by other Carolina processors of asbestos (R. 60, 62–63). In the ensuing proceedings, the full Commission ruled that the railroads had, by their concurrent maintenance of lower joint rates to Official Territory, subjected the Carolina complainants (appellants in No. 257) to undue prejudice and disadvantage in violation of § 3(1) of the Act (R. 75–78). It further

[2] H. K. Porter Company, Inc., one of the appellants in No. 257, is successor in interest to Thermoid Company (R. 262).

found that rates from the Canadian mines to the four Carolina cities where the complainants are located (Charlotte, Davidson and Marshville, North Carolina, and North Charleston, South Carolina) are and will be unduly prejudicial to the extent that they exceed by specified amounts the rates from the same origins to Ambler, Pennsylvania, in Official Territory (R. 77). The Commission accordingly entered an order on May 7, 1958, which, after reciting findings of undue prejudice, directed the defendants (the present appellees) to "cease and desist * * * from practicing the undue prejudice and preference" which it had found, and to establish rates "which will prevent and avoid [said] undue prejudice and preference" (R. 80–81).

The Commission also found that the rates from the Canadian mines to the pertinent Carolina destinations were unjust and unreasonable to the extent that they exceeded certain specified amounts (R. 76–77), and that the complainants are entitled to reparations in the amount of the difference between the charges collected and those which the Commission found to be reasonable (R. 78). No order was entered with respect to unreasonable rates (R. 81), but the complainants were advised in this connection to comply with Rule 1.100 of the Commission's General Rules of Practice (R. 78).[1]

[1] Rule 1.100 provides in part:

> When the Commission finds that damages are due, but that the amount cannot be ascertained upon the record before it, the complainant should immediately prepare a statement showing details of the shipments on which damages are claimed, in accordance with the form No. 5.
> * * *

On appellees' suit to set aside the Commission's "undue prejudice" order, the district court held the order invalid (R. 253). The court apparently concluded that the validity of the order depended upon whether the Commission had jurisdiction to regulate all factors of the combination rate charged for transportation from Canadian origins to Carolina destinations (R. 242, 248–249). Under this test of validity, it followed from the court's holding that the Commission was without jurisdiction to regulate the Canadian carriers' proportional rates from the points of origin to the border interchange points within the United States (R. 250, 252–253), that the order which the Commission had entered was beyond its jurisdiction.

SUMMARY ARGUMENT

Section 3(1) of the Interstate Commerce Act makes it unlawful for a railroad to subject any person to "any undue or unreasonable prejudice or disadvantage". A railroad violates this section if it participates in transportation under differing through rates, under similar transportation conditions, from a common origin to different destinations or from different origins to a common destination, and the rate disparity adversely affects any shipper or consignee. The section empowers the Commission to order a railroad so participating in a prejudicial rate disparity to cease and desist, irrespective of whether other carriers, not bound by the Commission's order, participate in the through transportation at disparate rates, provided the carriers which are bound by the order

can, by their own acts, terminate the undue prejudice caused by the rate disparity.

The disparity which the Commission here found to be prejudicial involves rates for through transportation from common Canadian origins to differing United States destinations. The Commission has jurisdiction only over transportation within the United States, but the Commission's undue prejudice order is directed only against railroads which "participate in the transportation within the United States". The order is valid and enforceable as against the American carriers which transport under the disparate through rates wholly within the United States, because these railroads both participate in the prejudicial higher and lower through rates and have it within their power to terminate the resulting undue prejudice.

The Commission has jurisdiction to determine the effect and character of rates covering through carriage from points outside the United States as an incident to its enforcement of the commands of the statute with respect to transportation services rendered within the United States as a part of such through carriage. This principle, established by *News Syndicate Co. v. New York Central R.R.*, 275 U.S. 179, as to the reasonableness of rates for through transportation from a point outside the United States is equally applicable to undue prejudice arising from differing rates for through transportation from a place beyond the country's border. *Cyanamid and Crude Cyanide From Niagara Falls, Ontario*, 155 I.C.C. 488; *Mayo Shell Corp.* v. *Baltimore & Ohio R.R.*, 297

I.C.C. 133. The Commission, in making such factual determination, is not thereby regulating or exercising control over transportation outside the United States. It follows that the Commission acted within its jurisdiction in entering the undue preference order which the court below set aside.

ARGUMENT

THE COMMISSION HAD JURISDICTION TO ENTER ITS ORDER REQUIRING TERMINATION OF THE UNDUE PREJUDICE CAUSED BY MAINTENANCE OF JOINT THROUGH RATES FOR TRANSPORTATION FROM CANADIAN ORIGINS TO OFFICIAL TERRITORY DESTINATIONS, LOWER THAN THE THROUGH COMBINATION RATES APPLICABLE TO TRANSPORTATION FROM THE SAME ORIGINS TO SOUTHERN TERRITORY DESTINATIONS

The district court stated at the outset of its opinion what it believed to be the controlling issue in the case. It said (R. 242):

> A single question is presented to this court: Does the Commission have jurisdiction over the foreign factor of a combination international rate when the foreign factor is a proportional rate from the points of origin to a border interchange within the United States?

The district court determined this question in the negative. The Government's position is that, without regard to the correctness of this determination, the Commission acted within its jurisdiction in directing the railroads operating in the United States, parties to joint rates from Canadian origins to Official Territory destinations and concurrently participating in higher through combination rates governing trans-

portation from these origins to Southern Territory destinations, to put an end to the undue prejudice and preference caused by this rate disparity.

The Commission's jurisdiction over the foreign factor (the Canadian railroads' proportional rates to the Vermont interchange points) of the through combination rates established for transportation to Southern Territory destinations may be relevant to the validity of the Commission's finding that the through combination rates were unreasonable. But insofar as the district court ruled on the validity of this finding, its ruling does not directly or indirectly affect the validity of the Commission's undue preference order. We believe, moreover, that the finding that the through combination rates were unreasonable, and the related finding (R. 78) that the Carolina manufacturers are entitled to reparations (see *supra*, p. 5), were not in issue before the district court.[5]

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[5] The order under review did not prohibit the railroads from charging for transportation from Canadian origins to Southern Territory, rates in excess of those which the Commission found to be reasonable for such transportation (R. 81). The order, by its explicit terms, prohibited only the undue prejudice and preference found to result from the disparity between rates to Official Territory and those to Southern Territory (*ibid.*).

The finding that the Carolina manufacturers are entitled to reparations does not, in our view, constitute a reviewable order, the Commission having refrained from entering any order pending a determination of the amounts involved. If an order is entered and the carriers thereafter fail to comply with it, the *shippers* will have a right to initiate suit in the courts pursuant to Section 16(2) of the Interstate Commerce Act. Such a suit, if filed in the federal courts, is to be heard by a single-judge district court, with right of appeal to the court of appeals. *United States* v. *I.C.C.*, 337 U.S. 426, 442–443; *Pennsylvania R. Co.* v. *United States*, 363 U.S. 202, 205–206. The three-judge district

The Commission's power to determine that certain Carolina manufacturers were subjected to undue prejudice by the higher level of rates applicable to the transportation of asbestos from Canadian origins to Southern Territory than to Official Territory, and to order removal of this undue prejudice, does not depend upon the Commission's power to determine that the through combination rates governing transportation to Southern Territory were unreasonable. "Proceedings [under § 3(1)] to remove unjust discrimination are aimed directly only at the relation of rates." *United States* v. *Illinois Central Railroad,* 263 U.S. 515, 520. Both the higher rate and the lower rate "may lie within the zone of reasonableness and yet result in undue prejudice." *Id.* at 524. "Orders to remove discrimination, as commonly framed, do not fix rates. They merely determine the relation of rates, by prohibiting the carrier from charging more for carriage to one locality than under similar conditions to another; * * *." *St. Louis Southwestern Railway* v. *United States,* 245 U.S. 136, 145.

Nor was the Commission's power to issue its undue prejudice order dependent upon its jurisdiction over (or power to enter an order against) the two Canadian railroads (Canadian National Railway Company and Quebec Central Railway Company) which transport asbestos from the Canadian mines to the Ver-

court which heard the instant suit instituted by the *carriers* did not purport to adjudicate the question of the carriers' liability for reparations (see R. 244), and it would appear that the court's expression of views which bear on that question would not be binding in the event of future litigation.

mont "interchange" points where delivery is made to railroads serving Official Territory and Southern Territory destinations. When connecting carriers furnish through transportation, and the rates are higher for transportation to certain destinations than to others, or higher from certain origins than from others, resulting in undue prejudice to particular shippers or consignees, the Commission's power to require termination of the undue prejudice is not dependent upon its power to reach by its order all carriers participating in transportation at the disparate rates. It is sufficient that the undue prejudice order runs against carriers who participate in transportation at the higher and the lower rates and who themselves are in a position to stop this rate disparity.

In *Illinois Central, supra,* the Illinois Central and various connecting independent railroads had established the same through rates, regardless of distance, for transporting to northern markets lumber shipped from mills in an area in Alabama and Mississippi known as blanket territory. However, a higher rate had been established for lumber shipped from a mill, within blanket territory, located on the Fernwood & Gulf (Fernwood), an independent short line connecting with the Illinois Central. The Commission found that the higher rate subjected this mill to undue prejudice and ordered discontinuance of the discrimination. The Illinois Centrol attacked the validity of the order as applied to it, upon the ground that the mill paying the higher rate "is not on its own lines and it is not in a position to remove, by its own act, the dis-

crimination complained of" (263 U.S. at 520).* This Court rejected the contention upon the basis that the Illinois Central, "acting alone, is in a position to" remove the prejudicial rate disparity (*id.* at 521). The Court thus ruled that a carrier participating in the higher and the lower rate causing undue prejudice may be validly ordered to cease and desist if it lies within the carrier's own power to bring the prejudicial rate disparity to an end, irrespective of whether the other carriers participating in the discriminatory rates are bound by the Commission's order.

The *Illinois Central* decision also establishes that § 3(1) applies to prejudice resulting from disparate rates whether they be through joint rates or through combination rates. Some of the through rates from blanket territory were combination rather than joint rates. The Court, holding this circumstance immaterial, stated (263 U.S. at 527):

> Undue prejudice may be inflicted as effectively by a through rate which is a combination of locals, as by a joint through rate. The power of the Commission to remove the unjust discrimination exists in both classes of cases.

Asbestos moving from the Vermont interchange points to Carolina destinations has to pass through Official Territory. Accordingly, substantially all of the railroads participating in this transportation (under through combination rates) also participate in the transportation of asbestos (under joint through rates) from the interchange points to Official Terri-

* The validity of the order as applied to the Fernwood was attacked upon other grounds (*ibid.*).

tory destinations, such as Ambler, Pennsylvania, and Baltimore, Maryland. American carriers against which the Commission's order is directed therefore participate in both the higher and the lower rates whose relationship was found to be unduly prejudicial to Carolina asbestos manufacturers.

These railroads, furthermore, are in a position to terminate this undue prejudice by their own acts. One method by which they may terminate the existing prejudicial rate disparity is by withdrawing their concurrence in the joint rates established for transportation from Canadian origins to Official Territory destinations. Upon termination of these joint rates, the rates applicable to this transportation would be a combination of the Canadian carriers' proportional rates to the interchange points and local or class rates therefrom; the rates to Official Territory would then be on the same basis as the present combination rates governing transportation from Canadian origins to Carolina destinations. But this is not the only method of terminating the existing prejudicial rate disparity available to the American carriers. Another alternative would be to publish proportional rates from the interchange points to Carolina destinations sufficiently low so that these rates, plus the Canadian carriers' proportional rates to interchange points, would meet the requirements of the Commission's report and order as to elimination of prejudicial rate disparity as between Official Territory destinations and Carolina destinations (see R. 77–78, 81).

The Commission was not deprived of jurisdiction by reason of the fact that it dealt with disparate

rates for through transportation from points in a foreign country to points in the United States. By express terms, the requirements of the statute embrace transportation from a foreign country to a place in the United States "insofar as such transportation [or transmission] takes place within the United States".[7]

The Commission's jurisdiction to enter its undue prejudice order involves, we think, two aspects. The first is the Commission's jurisdiction to determine whether differing through rates from a foreign origin to different United States destinations constitute such rate disparity as to be unduly prejudicial to certain consignees within the meaning of § 3(1) of the Act. The second is its jurisdiction, if it finds such prejudice, to order termination thereof.

As to the first jurisdictional question, railroads operating wholly within the United States are engaged in transportation under through rates which are higher to some destinations, distance considered, than to others. The Commission can determine whether the domestic transportation at these disparate through rates comes within the § 3(1) prohibition only by determining whether there is such rate disparity as to the rates charged for, and applicable to, through carriage (which includes transportation outside the United States). The Commission, in making this factual determination, is obviously not regulating or

[7] Section 1(1) of the Act, 49 U.S.C. 1(1), makes its provisions applicable to common carriers engaged in the transportation of property by railroad "from or to any place in the United States to or from a foreign country, but only insofar as such transportation or transmission takes place within the United States".

exercising control over the rates charged for the foreign part of the through transportation.

In an analogous situation, this Court held that the Commission has jurisdiction to determine the reasonableness of a rate jointly established by a Canadian carrier and an American carrier for carriage of goods from a point in Canada to a point in the United States, where it was necessary for the Commission to make this determination in order to decide whether an American consignee was entitled to recover reparations from the American carrier, which transported the goods from the international boundary under the joint through rate. *News Syndicate Co.* v. *New York Central R.R.*, 275 U.S. 179, 185–188. We submit that the principle which the case establishes is, that the Commission may, as an incident to its enforcement of the commands and prohibitions of the statute, pass upon the character or effect of rates charged for through transportation from a foreign country. We likewise submit that this principle is equally applicable whether the Commission is dealing, as in *News Syndicate*, with the requirements of §§ 1(4) and 1(5) of the Act or, as here, with those of § 3(1).

The foregoing observations are directly supported by *Cyanamid and Crude Cyanide From Niagara Falls, Ontario*, 155 I.C.C. 488, decided in 1929. A Canadian carrier and an American carrier filed joint rates superseding lower joint rates which they had previously established for transporting cyanamid and cyanide from a point in Canada to points

in the United States, and the full Commission (two Commissioners dissenting) ruled that it had jurisdiction to consider the lawfulness of the new joint rates. 155 I.C.C. at 489–493, 503. It stated that the effect of a contrary holding "would be to free from any regulation every joint international rate now participated in by the United States lines, and to render impotent our jurisdiction even over that portion of the transportation which 'takes place within the United States' ". *Id.* at 491. The Commission significantly added (*ibid.*): "And this would be true not alone as to the 'reasonableness' of such rates, which was the only question considered by the court [in *News Syndicate*], but to questions of undue prejudice and unjust discrimination as well."

In a concurring opinion Commissioner Eastman said that the Commission had in the past "asserted jurisdiction over the lawfulness of international rates under both sections 1 and 3" of the Act (*id.* at 500). He observed, with reference to § 3, that an international rate might be "relatively lower than corresponding rates within this country" to the injury of certain American shippers; and that establishment by the Commission of a lawful rate from the boundary would not displace the low joint international rate or abate the injury which it caused (*id.* at 501). He further said (*ibid.*):

> The only practicable remedy is an order requiring the United States railroad to cease and desist from participating in the objectionable international rate. Upon further consideration it seems to me that we must have

> jurisdiction to make such an order, for there is no other way of exercising effective control over that portion of the international transportation which takes place within the United States, of which we plainly have jurisdiction.

In *Mayo Shell Corp.* v. *Baltimore & Ohio R.R.*, 297 I.C.C. 133, the Commission ruled, in accordance with the view which it had declared in its *Cyanamid* ruling, that it is empowered to act against undue prejudice caused by disparate rates for through transportation furnished in part outside the United States. In *Mayo Shell,* rates on crushed or ground oyster shells to trunkline and New England destinations, and to 122 points in Canada, were higher from Houston, Texas, than from Morgan City, Louisiana, and were found to be unduly prejudicial to a Houston shipper of shells. The Commission's order required rates from Houston to be no higher than those from Morgan City, and made no exception of rates to Canadian destinations (297 I.C.C. at 135).[8]

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[8] While rates to Canadian destinations were thus covered by the order, its commands respecting such rates were confined to those charged by carriers operating within the United States, as to service rendered therein. The Commission said (*ibid.*):

> Portions of the transportation at the assailed rates occur in Canada, * * *. We have jurisdiction only over such of the transportation as takes place within the United States, and our order herein will be directed only against the defendant carriers engaged in such transportation.

The second aspect of the jurisdictional question before the Court—whether the Commission's order is valid and enforceable when limited, as provided in the order,* to rates charged by United States carriers for transportation within the United States—has already been considered (*supra*, pp. 10–13). We repeat that the order, as so limited, is valid and enforceable because (1) carriers operating wholly within the United States are parties to the higher and lower through rates found to be unduly prejudical and (2) these carriers have it within their power to put an end to this undue prejudice without consent or other action by carriers operating outside the United States (*supra*, pp. 12–13).

CONCLUSION

It is respectfully submitted that the Commission acted within its jurisdiction in entering its undue preference order, and that the judgment below should be reversed with directions to dismiss the complaint.

ARCHIBALD COX,
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FEBRUARY 1961.

*The order runs against the defendant railroads named in the complaints, "according as they participate in the transportation within the United States" (R. 81).

U. S. GOVERNMENT PRINTING OFFICE 1961

SUPREME COURT OF THE UNITED STATES

Nos. 257, 258 AND 266.—OCTOBER TERM, 1960.

H. K. Porter Co., Inc., et al., Appellants, 257 *v.* Central Vermont Railway, Inc., et al.	On Appeals From the United States District Court for the District of Vermont.
Interstate Commerce Commission, Appellant, 258 *v.* Central Vermont Railway, Inc., et al.	
United States, Appellant, 266 *v.* Central Vermont Railway, Inc., et al.	

[May 22, 1961.]

MR. JUSTICE BLACK delivered the opinion of the Court.

The Interstate Commerce Act confers broad powers upon the Interstate Commerce Commission to regulate railroad transportation in the United States or to or from a foreign country, "but only insofar as such transportation . . . takes place within the United States."[1] In this case, here on appeal under 28 U. S. C. §§ 1253 and 2101 (b), a three-judge District Court set aside a Commission order on the ground that the Commission was attempting to regulate railroad transportation in Canada in excess of the Commission's jurisdiction.[2]

[1] 49 U. S. C. § 1 (1) (a) and § 1 (2).

[2] 182 F. Supp. 516.

The Province of Quebec, Canada, is a principal source of asbestos for manufacturers of asbestos products in this country. It is transported by Canadian railroads through southern Canada to points in Vermont three to five miles south of the border and carried from there by the various appellee railroads to other points in the United States. Canadian and American carriers have joined in the publication of joint through rates available to consignees in "official territory" in the Northeastern States,[3] which rates are substantially lower than the combination of separate or local rates that are published and available as combination through rates for consignees in the Southern States. On the basis of these and other facts the Commission found after hearings that the higher combination rates to complainants in the South were: (a) "unjust and unreasonable" and therefore in violation of § 1 (5) of the Act;[4] and (b) "unduly prejudicial" to the southern consignees and "unduly preferential" to the northern consignees enjoying the lower joint rates, and therefore in violation of § 3 (1).[5] The Commission then entered its order directing the railroads to cease and desist from continuing to practice the undue prejudice and preference it had found and to establish, post and maintain rates and practices which would thereafter "prevent and avoid" such prejudice and preference.[6]

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[3] "Official territory" is in general that area of the United States lying east of the Mississippi River and north of the Potomac and Ohio Rivers. See Class Rate Investigation, 1939, 262 I. C. C. 447, 457.

[4] 49 U. S. C. § 1 (5).

[5] 49 U. S. C. § 3 (1).

[6] Since the challenged order prescribed no "reasonable rates" to be observed, we have no occasion to consider the contention that the Commission was without jurisdiction to prescribe such rates. Nor did the Commission enter any final order that a complainant is entitled to an award of damages because it had been charged unlawful rates. Such an order, when and if made, can be challenged before a

The District Court's holding that the Commission was without jurisdiction was based on its assumption that the Commission's order attempted to control the Canadian part of the transportation. But the order did not run against any transportation except that taking place "within the United States." The order directed the defendant railroads, "according as they participate in the transportation within the United States," to take action within their power to cease their participation in a transportation practice that the Commission had found to be prejudicial in violation of § 3 (1). The affected transportation within this country was that "from a foreign country" over which § 1 (1)(a) specifically gives the Commission jurisdiction, and the order did nothing more than direct railroads engaged in that transportation to adjust their transportation practices "within the United States" in such a way as to eliminate illegal discriminations. These railroads operating within the United States undoubtedly have complete power to stop these discriminations. Mere withdrawal by the American railroads from the preferential joint through-rate agreements would be an obvious way to do so, and an alternative method would be to lower the combination through rates to southern territory by reduction of the rates from the Vermont interchange points to the South.

It has long been settled that the Commission's power to forbid unlawful rate discriminations is in no way diminished because the rates are published as joint through rates or combination through rates.[7] This power likewise is not lost merely because the particular transportation by railroads carrying goods in this country happens to be a continuation of carriage from another country.

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single judge under 49 U. S. C. § 16 (2). See *United States* v. *I. C. C.*, 337 U. S. 426, 442–443; *Pennsylvania R. Co.* v. *United States*, 363 U. S. 202, 205.

[7] See *United States* v. *Illinois Central R. Co.*, 263 U. S. 515, 527.

Otherwise the Commission's mandate to protect shippers against all undue discriminations would be frustrated with respect to rates that in part include payment for transportation that takes place in a foreign country.[*]

It was error to set aside the Commission's order for lack of jurisdiction, and therefore the District Court's judgment is

Reversed.

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[*] Cf. Commissioner Eastman's concurring opinion in *Cyanamid and Crude Cyanide from Niagara Falls, Ontario*, 155 I. C. C. 488, 501–502.